

AMENDMENTS TO THE DRAWINGS

Appended hereto as an attachment are replacement formal drawing sheets to replace sheets 1 and 7 of the drawings that were originally included in the application. The replacement sheet for sheet 1 does not include reference numeral 114 and its associated lead line that were shown in originally-filed Figure 1. The replacement sheet for sheet 7 includes new Figure 11 to show the slot formed by the gutter rear wall and the cover rear wall that is received in the slot. Figure 11 shows in pictorial form the subject matter recited in originally-filed claim 2 and is therefore not new matter.

Also appended hereto are copies of the originally-filed drawing sheets 1 and 7 showing in red the drawing changes that are reflected in the attached replacement drawing sheets.

Approval of the drawing changes shown and acceptance of the enclosed replacement drawing sheets incorporating those changes is respectfully requested.

REMARKS

In this Amendment new specification paragraph [0020.1] is added to describe new drawing Figure 11, and specification paragraphs [0022], [0029], and [0038] are amended for clarification purposes. Additionally, sheets 1 and 7 of the drawings are amended, a number of the claims have been amended, claims 6, 10, and 14 have been canceled without prejudice or disclaimer, and new claims 37 and 38 have been added.

The drawings were objected to as not showing the slot recited in claim 2. New drawing Figure 11 included on the attached replacement for original sheet 7 shows the claimed structure. In addition to having been identified in claim 2, that structure is also further described in paragraph [0038] of the specification as originally filed and is therefore not new matter.

The specification was objected to and claims 14 through 16 were rejected under 35 U.S.C. § 112, first paragraph. In that regard, paragraph [0029] of the specification has been amended to incorporate subject matter that was included in original claims 14 through 16. Further, claim 14 has been canceled and the subject matter thereof has been amended to overcome the asserted lack of clarity and as so amended it is included in amended claim 1. Claims 15 and 16 have been similarly amended.

Claims 3, 10, 23 through 33, and 36 were rejected as indefinite. In that regard, claim 10 has been canceled without prejudice or disclaimer. Additionally, the subject matter of claim 10 has been amended to overcome the asserted indefiniteness and as so amended it is included in amended

claim 1. Claims 23, 24, 29, 32, 33 and 36 have each been amended in minor respects to overcome the asserted indefiniteness.

Claims 1 through 7 and 9 were rejected as anticipated by the Walters '622 reference. Claim 1 has been amended to more specifically recite the support bracket structure and, as noted above, it includes the substance of original claims 1, 10, and 14. The Walters '622 reference does not show the structure as now claimed in amended claim 1. More specifically, as shown in each of Figures 3 through 6 of the Walters '622 reference, hanger 30 includes a cavity 34 in the form of a slot at the inner end adjacent to back wall 18l of trough 10. That cavity is shown as a U-shaped, forwardly-facing slot in the hanger and defines an element in which flexfold 42 of deflector 40 is received and positioned. Thus, the wall of cavity 34 that is adjacent to gutter back wall 18 has a finite thickness and it thereby serves to space the innermost end of deflector 40 from back wall 18. The purpose for that structural arrangement is to allow assembly of deflector 40 to hanger 30 before the assembly is installed on a structure. In that regard, see Walters '622, col.5, lines 52 through 55. Thus, the rear wall of the cover of Walters '622 does not include a contact surface for contacting the gutter rear wall as claimed in amended claim 1. And in addition to not showing or suggesting the claimed arrangement, the Walters '622 reference actually teaches away from the claimed structural arrangement. Further, that reference also does not show a support bracket in the form of an L-shaped body having first and second legs. Consequently, the Walters '622

reference neither anticipates nor suggests the invention as it is claimed in amended claim 1.

Claims 2 through 7 and 9 each depend from claim 1, either directly or indirectly, and therefore those claims are also not anticipated by the Walters '622 reference, and for the same reasons as are given above in connection with claim 1.

Claims 1 through 7 and 9 were also rejected as anticipated by the Knudson '435 reference. In that regard, the Knudson '435 reference does not show or suggest a support bracket including cover support means in the form of an upwardly-facing, inclined, flat support surface carried by the first leg of the bracket for contacting a downwardly-facing surface at a rear portion of the gutter cover as claimed in amended claim 1. Instead, it shows a hook 136 and does not show the claimed surface-to-surface contact of the present invention for vertical support of the rear portion of the gutter cover – it merely prevents forward movement of the top shield 99 relative to 92, away from the building wall, as shown in Figure 10 of that reference. Additionally, the Knudson '435 reference does not show or suggest a fastener for securing the cover body rear wall and the gutter rear wall to a building surface.

Claims 2 through 7 and 9 each depend from claim 1, either directly or indirectly, and therefore those claims are also not anticipated by the Knudson '435 reference, and for the same reasons as are given above in connection with claim 1. Furthermore, the dependent claims contain additional recitations that

further distinguish the invention as so claimed from the teachings of the references relied upon.

Claim 8 was rejected as obvious over either of the Walters '622 or Knudson '435 references. However, that claim depends indirectly from amended claim 1, which has been shown not to teach or suggest the invention claimed in that independent claim. Thus, those references also do not suggest or render obvious the subject matter claimed in claim 8.

Claims 14 through 16 were rejected as obvious based upon the Walters '622 and Knudson '435 references, in combination with the Snell '436 reference. However, the Snell '436 reference suffers from the same deficiencies as do each of the Walters '622 and Knudson '435 references. Additionally, it also does not show or suggest a cover support means carried by the bracket for contacting a rear portion of the cover. Instead, the rear portion of the Snell gutter cover is slipped under the roof shingles (see, Snell '436, col. 3, paragraph [0049], lines 1 through 3). Thus, claims 15 and 16 are not obvious from that combination of references.

Claims 1 through 18 were rejected as obvious based upon the combination of the Solutions Company and Knudson '435 references. The examiner acknowledged that the Solutions Company reference does not show a gutter in which the rear wall is higher than the front wall, and that it does not show that the bracket vertical leg carries a support means for the rear portion of the cover. In fact, as noted above, the Knudson '435 reference also does not show that support arrangement. The Solutions Company reference also

does not show a cover rear wall that contacts the gutter rear wall, nor is the Solutions Company bracket an L-shaped body. Moreover, those references do not contain any teaching that would lead one not having knowledge of the present invention to combine them in any way. And it is not apparent from the references which elements of which reference should be combined with which elements of the other reference.

Claims 19 through 23, 32, and 36 were rejected as obvious based upon the Solutions Company and Knudson '435 references when combined with the Sickler '144 reference. In that regard, neither the Solutions Company reference nor the Knudson '435 reference shows or suggests an end cap structure. And neither reference shows or suggests an aperture in a bracket body for receiving a fastener for fastening an end cap to an adjacent support bracket. Further, the Knudson '435 reference does not show a mounting flange, as suggested by the examiner, but merely an inclined ramp rib section 147 as an installation guide and as a stiffening means (see Knudson '435, col. 5, lines 37 through 40). The Sickler '144 reference was cited for allegedly showing a support bracket connected with an end cap. However, the Sickler '144 reference does not show or relate to a covered gutter, and there is no connection between support bracket 90 and end cap means 130, as clearly shown in Figures 2 and 3 of the Sickler '144 reference, which each show those components to be widely spaced from each other. Moreover, the support bracket is external to the gutter, not within the gutter as claimed, and there is no showing of an aperture in the support bracket 90 for receiving a fastener for

fastening an end cap to an adjacent bracket, also as claimed herein. Figure 6 of that reference merely shows a two-part end cap, the parts of which are connected by rivets 160. Again, there is no suggestion in any of those references that would lead one to even attempt to combine them in the manner suggested by the examiner.

Claims 24 through 31 and 33 were rejected as obvious based upon the combination of the Solutions Company, Knudson '435, and Sickler '144 references, in view of the Japanese '827 reference. The Solutions Company, Knudson '435, and Sickler '144 references have already been distinguished from the present invention. With regard to the Japanese '827 reference, it does not show or suggest a covered gutter, it does not show or suggest a support bracket for supporting a gutter cover, and it does not show or suggest connection means carried by the end cap for connecting the end cap with an adjacent support bracket. Instead, it shows a distinctly different structure that does not even remotely suggest its combination with the other references.

Claim 36 was also rejected as obvious based upon the combination of the Walters '622, Knudson '435, Solutions Company, and McDonald et al. '792 references. The McDonald et al. '792 reference was cited as allegedly showing an end cap having a gutter-trough closure region and an above-trough closure region. But the McDonald et al. '792 reference carries with it the shortcomings noted above in connection with the other references and the invention as claimed in claim 1, from which claim 36 depends. And there is no

suggestion in any of the references that would lead one of only ordinary skill in the art to combine them in the manner the examiner has done.

In addition to each of the references individually not showing or suggesting the invention as it is claimed, even if those references were to be combined in some way, the combination does not suggest the structure as recited in the present claims. Moreover, the references do not contain any hint as to exactly how they could be combined to arrive at the invention as claimed. In that regard, it is not apparent which features or elements of which reference are to be combined with which features or elements of the other references. Accordingly, it is suggested that the only motivation for combining the references in the manner the examiner has done is the disclosure contained in the present application. And to use as a road map or as a template an inventor's disclosure to aid in picking and choosing particular parts of particular references that allegedly can be combined to render obvious that which only the inventor has taught is an improper basis for rejection. The invention as claimed is directed to a structure that is not obvious from the teachings of the references relied upon.

Even if one having only ordinary skill in the art had before him each of the references relied upon, it is not apparent how or why certain elements of a reference are to be combined with certain elements of another reference, and which elements of which references are to be omitted from any combination of the references.

Clearly, neither of the individual references, by itself, teaches or suggests the invention as it is claimed in amended claim 1. And as noted above, each of

the references relied upon by the examiner discloses a different structure from that to which the present claims are directed. And because of those numerous and significant differences, there would be no motivation to combine them.

Although one could assert broadly, as the examiner has done, that there exists a motivation to make a particular combination of particular elements of particular references in a particular way, such a mere broad and conclusory assertion by itself is insufficient. In that regard, it has been held that for there to be a sufficient showing of a motivation to combine the teachings of references, that motivation must be supported by referring to some relevant and identifiable source of information. Statements that are merely conclusory of possible advantages that allegedly would lead one to combine the teachings of several references, and mere assumptions of what an ordinarily skilled person would or would not do, are by themselves inadequate to support a conclusion that there exists a motivation to combine references in a particular way. In that regard, the Federal Circuit explained the matter thusly:

"The factual inquiry whether to combine references must be thorough and searching." *Id.* *It must be based on objective evidence of record.* This precedent has been reinforced in myriad decisions, and cannot be dispensed with....The examiner's conclusory statements that "the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software" and that "another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial" do not adequately address the issue of motivation to combine. *This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.* It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against

its teacher." W. L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983).

In re Lee, 277 F.3d 1338 (Fed. Cir. 2002) (emphasis added).

Consequently, the mere fact that an element exists, and the mere assertion of a possible subjective benefit that in hindsight might be achieved by utilizing an existing element in a combination of the teachings of different references, is insufficient to support a conclusion of obviousness to combine. The mere fact that an element or structure exists does not automatically make obvious its combination with another element or structure. One must be motivated in some specific way to make that combination, and, as the court noted in the *Lee* decision cited above, that motivation must come from an identifiable source other than the inventor whose invention is being assessed for obviousness. Thus, because the references relied upon contain no motivation to combine their teachings, let alone in what way any combination could be effected, the combination of references is without independent basis and is therefore improper. The present invention as it is herein claimed is directed to an invention that is not obvious from the teachings of the references relied upon.

Applicant's attorney acknowledges with appreciation the examiner's indication of allowability of original claims 34 and 35. However, it is believed that all the claims as they now stand are in allowable form.

Finally, new claims 37 and 38 each depend from amended claim 1, and they are therefore allowable for the same reasons as apply to that independent claim.

Based upon the foregoing amendments and remarks, the specification, drawings, and claims as they now stand in the application are believed clearly to be in allowable form. The claims patentably distinguish over the disclosures contained in the references that were cited and relied upon by the examiner, whether those references be considered alone or in combination, and whether they be considered in the context of 35 U.S.C. § 102 or of 35 U.S.C. § 103. Consequently, this application is believed now to be in condition for allowance. Accordingly, reconsideration and reexamination of the application is respectfully requested with a view toward the issuance of an early Notice of Allowance.

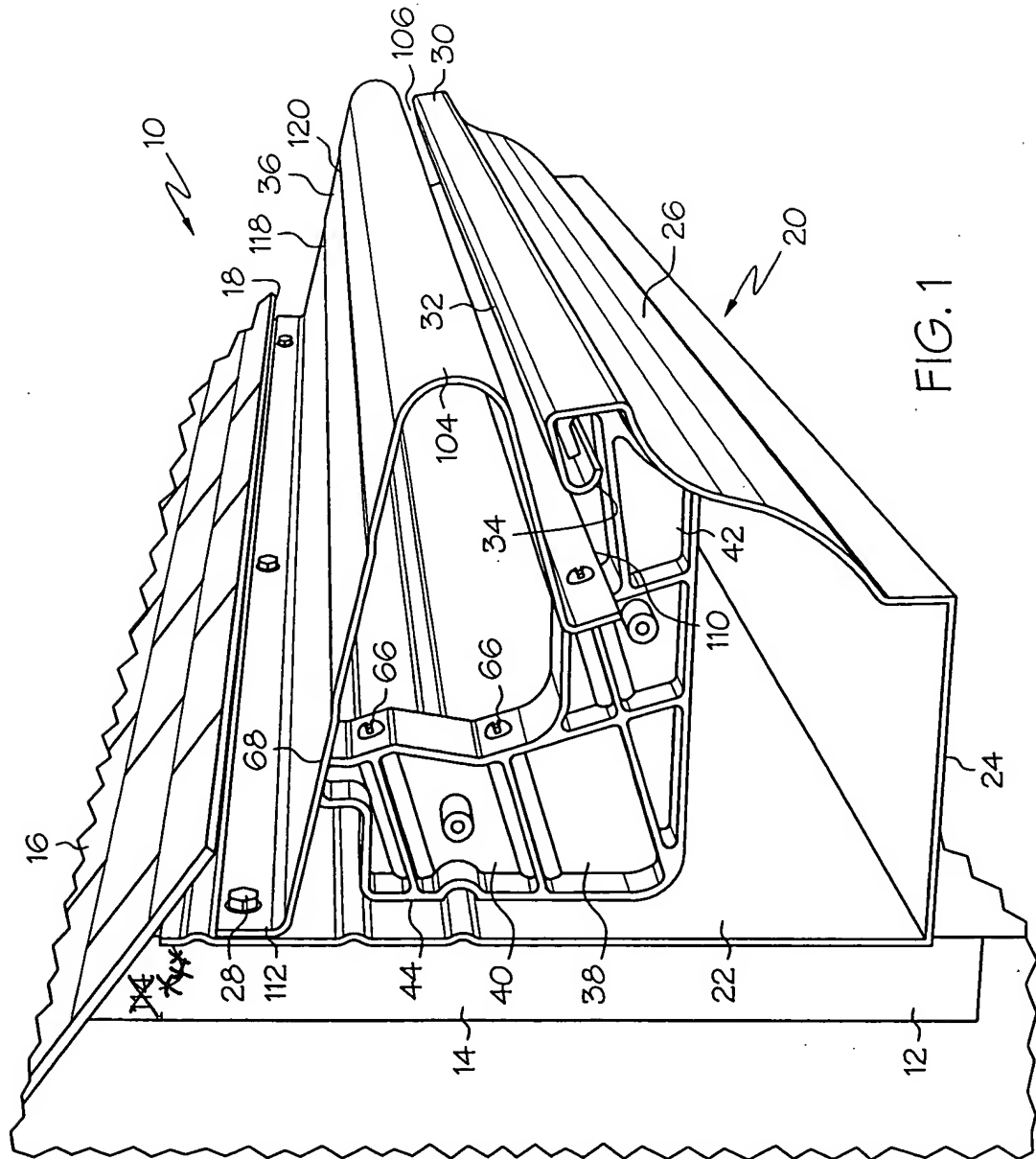
The examiner is cordially invited to telephone the undersigned attorney if this amendment raises any questions, so that any such question can be quickly resolved in order that the present application can proceed toward allowance.

Respectfully submitted,



Alfred J. Mangels
Reg. No. 22,605
4729 Cornell Road
Cincinnati, Ohio 45241
Tel.: (513) 469-0470

May 22, 2006



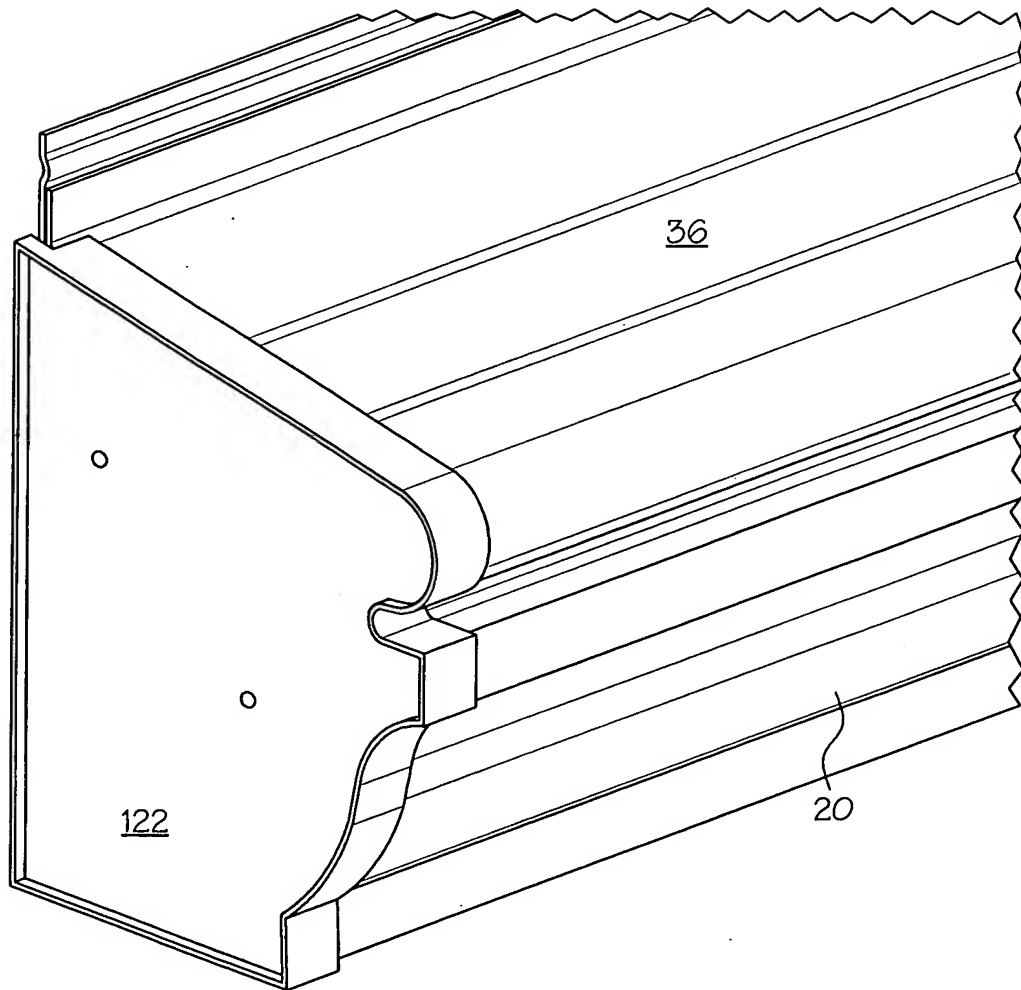


FIG. 10

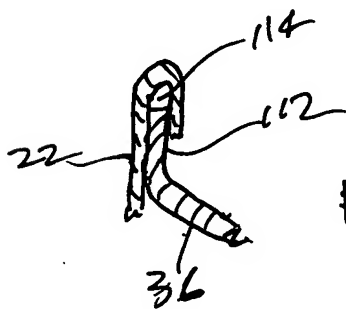


FIG. 11